

Rules and Regulations of the Newton Health Department

Rules and Regulations Governing the Practice of Bodywork

The Newton Health Department hereby orders that the following rules and regulations governing the practice of bodywork be enacted on October 1, 2011.

Authority. These rules and regulations are adopted under the authority of Section 31 of Chapter 111 of the Massachusetts General Laws.

Scope. The scope of these regulations is broad and includes many aspects, which if not particularly regulated, could lead to serious ramifications to the health and safety of the public. These regulations also designate the requirements for the renewal of licensure, as well as grounds for the suspension, revocation, and denial of licensure.

I. Definitions

- A. *Administrative Revocation* shall mean an administrative action taken when a licensee fails to timely renew licensure and ignores all other available options. A licensee whose license has been administratively revoked is officially unlicensed and cannot lawfully continue to practice as a bodywork therapist or operate a bodywork establishment in the City of Newton. Licenses administratively revoked may be reinstated upon meeting the conditions contained in these regulations.
- B. *Agent* shall mean a person who has received delegation of authority from the Commissioner of Health and Human Services to perform functions subject to these regulations.
- C. *Applicant* shall mean an individual seeking licensure who has submitted an official application and paid the application fee in effect.
- D. *Application* shall mean the application form approved by the Commissioner of Health and Human Services and shall include, the following: passport type photograph, official transcript from educational institution(s), verification of successful completion of the applicable national certification exam, two original letters of professional recommendation, and certification/licensure from other state or municipal jurisdictions.
- E. *Bodywork* shall refer to the practice of Reflexology and/or Asian Bodywork (including, but not limited to: Accupressure, AMMA Therapy®, Chi Nei Tsang, Five Element Shiatsu, Integrative Eclectic Shiatsu, Japanese Shiatsu, Jin Shin Do®, Bodymind Acupressure™, Macrobiotic Shiatsu, Shiatsu Amma Therapy, Traditional Thai Massage, Tuina, Zen Shiatsu, and Ayurvedic medicine).
- F. *Commissioner* shall mean the Commissioner of Health and Human Services of the Newton Health Department and Human Services.

- G. *Client* shall mean a person with whom the bodywork therapist has an agreement to provide bodywork therapy services.
- H. *Certification* shall mean successful completion of the most current requirements of the American Organization for Bodywork Therapies of Asia (AOBTA®), National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), American Reflexology Certification Board, or other nationally recognized credentialing organization or its successor organization or equivalent organization(s) that provides certification based on a review of candidate qualifications and credentials and an examination of knowledge in the field. Such certification credentials must be approved by the Commissioner of Health and Human Services.
- I. *Department* shall mean the Newton Department of Health and Human Services.
- J. *Establishment* shall mean any location, or portion thereof, which advertises and/or provides bodywork therapy services on the premises. Any health care facility licensed by an agency of the Commonwealth of Massachusetts, or the office of any health care professional licensed by the Commonwealth of Massachusetts wherein bodywork therapy services are not advertised or provided except on an occasional out-call basis is not an establishment for the purposes of these regulations. Any location within a licensed health care facility or health care professional's office which is dedicated to and maintained for the use of a therapist who performs occasional therapy services to the patients of the facility is a bodywork establishment for the purposes of licensure under these regulations and the portions of the facility or office wherein bodywork therapy services are provided must be in compliance with the standards established by these regulations.
- K. *Expired File* shall mean an administrative action which renders an incomplete or denied file inactive.
- L. *Licensee* shall mean a person holding a license to practice any form of bodywork or to operate a bodywork establishment in the City of Newton. Where applicable, this shall include partnerships and/or corporations.
- M. *Person* shall mean any individual, firm, corporation, partnership, organization, or body politic.
- N. *Retired license* shall mean a license that has not been renewed for more than twelve (12) consecutive months.
- O. *Therapist* – shall mean a bodywork therapist licensed by the Department.

II. Exemptions

- A. Any Physician, chiropractor, osteopath, nurse, physical therapist, massage therapists or acupuncturist operating within the scope of his/her Commonwealth of Massachusetts license or registration and not representing him/herself as a bodywork therapist shall be exempt from these regulations.

- B. Hospitals, long-term care facilities, and home health agencies licensed or certified under the laws of the Commonwealth of Massachusetts shall be exempt from these regulations.

III. Therapist Licensure Requirements

- A. It is a violation of these regulations for any person who is not licensed in the manner described herein to represent being a licensed bodywork therapist or to hold him/herself out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or advertisements of any sort.
- B. To practice bodywork therapy in the City of Newton, a person must possess a lawfully issued license from the Department. The process for obtaining a license is as follows:

- (1) An application packet shall be obtained from the Department.
- (2) The applicant shall answer every question truthfully and completely and supply all information requested in the application form. The applicant shall submit the application along with all required documentation and fees to the Department. All required documents must be received by the Department within sixty (60) days for an active application. False statements shall constitute grounds for revocation or denial of an issued license.
- (3) Applications shall be accepted throughout the year. The Department shall act on license applications within thirty (30) days of receipt of all required documents as described in these regulations.
- (4) The applicant shall submit a certified copy of his birth certificate or its equivalent to establish that the applicant is, at the time of application, at least eighteen (18) years of age.
- (5) The applicant shall attach to his application a signed passport type photograph taken within the preceding 12 months.
- (6) The applicant shall provide satisfactory evidence of being certified by an appropriate licensing authority, or its equivalent or successor organization which shall be submitted directly to the Department.
- (7) The applicant shall have submitted evidence of good moral character; such evidence shall consist of two (2) original letters from health care professionals attesting to the applicant's personal character and professional ethics.
- (8) The applicant shall complete a release of Criminal Offenders Record Information (CORI) for the Department to receive criminal history.

(9) The applicant shall disclose the circumstances surrounding any of the following:

- (a) Disclosure of any conviction for any sexual-related offense, including prostitution or sexual misconduct, rape as well as other felony against persons occurring within the past ten (10) years.
- (b) Revocation or denial of a license to practice bodywork issued by any state or municipality.
- (c) Loss or restriction of licensure or certification by any jurisdiction for any reason.

(10) The applicant for a bodywork license shall submit a non-refundable application fee of seventy-five dollars (\$75.00) by check or money order made payable to the City of Newton.

(11) The application shall be sworn to and signed by the applicant and notarized by a Notary Public of the Commonwealth of Massachusetts.

(12) All documents submitted for licensure purposes become the property of the Department and will not be returned.

C. The Department may grant a therapist license based on reciprocity with a jurisdiction whose standards for licensure, in the opinion of the Commissioner, is equivalent to or greater than those of the Department.

IV. Establishment Licensure Requirements

A. In addition to ensuring that all bodywork therapists employed in the establishment have obtained a license to practice bodywork in the City of Newton, as described in Section III above, a proprietor wishing to operate a bodywork establishment must complete the additional licensure requirements below.

B. Unless all bodywork therapists within the facility have individual licenses from the City of Newton, it is a violation of these regulations for any person operating a bodywork establishment to present his/her establishment as a licensed bodywork establishment or to hold his/her establishment out to the public as being licensed by using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or advertisements of any sort.

C. To operate a bodywork establishment in the City of Newton, a person must complete the following application process:

(1) An application packet shall be obtained from the Department.

(2) The applicant shall answer every question truthfully and completely and supply all information requested in the application form. The applicant shall submit the application along with all required documentation and fees to the Department. All required documents must be received by the Department within sixty (60) days for an

active application. False statements shall constitute grounds for revocation or denial of an issued license.

- (3) Applications shall be accepted throughout the year. The Department shall act on license applications within thirty (30) days of receipt of all required documents as described in these regulations.
- (4) The applicant shall include in the application copies of the licenses of all duly licensed body workers performing bodywork at the establishment. An establishment shall have at least one (1) duly licensed body worker employed at all times in order to maintain licensure.
- (5) The owner is responsible to ascertain that all persons performing bodywork in his establishment are duly licensed by the Department. Violation of this requirement may result in suspension or revocation of the establishment license.
- (6) There shall be a person in charge in the establishment at all times, who shall be so designated by the owner. The person in charge shall be a manager or a therapist. This person shall be authorized to sign Department inspection forms and shall be responsible for the operation of the establishment in the absence of the owner.
- (7) Therapists shall maintain a sufficient level of personal cleanliness and wear clothing that is clean as determined by the Department. No person in an establishment shall be unclothed. No person working in an establishment shall wear attire that exposes any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks, or genitals.
- (8) The applicant for an establishment license shall submit a non-refundable application fee of one hundred dollars (\$100.00) by check or money order made payable to the City of Newton.
- (9) The application shall be sworn to and signed by the applicant and notarized by a Notary Public of the Commonwealth of Massachusetts.
- (10) All documents submitted for licensure purposes become the property of the Department and will not be returned.

V. Practice Standards for bodywork establishment, personnel, equipment, linens and supplies

A. Establishment Standards

- (1) All establishments initially licensed after the effective date of these regulations must contain a waiting area for clients within the establishment.

- (2) The establishment shall maintain a properly installed smoke detector and fire extinguisher.
- (3) Bodywork may be conducted only in rooms, which are adequately lighted and ventilated, and so constructed that they can be kept clean. Floors, walls, ceilings and windows must be kept free of dust, soil, and other unclean substances.
- (4) A plan describing sanitation measures must be provided to the Department for any bodywork which entails disrobing and/or draping, use of oils or lotions, and/or use of a massage-type of table.

B. Personnel

- (1) All persons who perform bodywork at an establishment must hold a current license from the Newton Health Department.
- (2) All therapists conducting bodywork at an establishment shall be deemed to be employees of the establishment and shall not be considered independent contractors.
- (3) A therapist may only perform bodywork at the licensed establishment(s) listed on his therapist license. Therapists may provide services off-site for single events, such as health fairs and demonstrations, provided they notify the Department at least two (2) days prior to the event.
- (4) Therapist and establishment licenses are not transferable.
- (5) The use of aliases is prohibited. If the therapist or establishment owner wishes to use a name other than that which appears on a license, both names must be used in all advertising and representations.

C. Equipment

- (1) All equipment and supplies used in the performance of bodywork shall be maintained in a safe and clean manner.
- (2) If any latex-containing products are used, a sign shall be conspicuously posted so stating and all clients shall be advised that latex-containing products are used.

VI. Sexual Activity Prohibited

- A. Sexual activity by any person or persons in any establishment is prohibited.
- B. As used in these regulations, "sexual activity" means any direct or indirect physical contact or communication by any person or between persons which is intended to erotically stimulate either person or both or which is likely to cause such stimulation and include: sexual intercourse, fellatio, cunnilingus, masturbation (or "hand release"), or anal intercourse. For the purpose of these regulations, masturbation means the manipulation of any body tissue with the intent to cause sexual arousal. As used, herein, sexual activity can involve the use of any device or object and is not dependent on whether penetration, orgasm, or ejaculation has occurred.

VII. General Requirements

- A. All licensees shall notify the Department of a change of name and/or address within thirty (30) days.
- B. All licenses are non-transferable.
- C. All licenses shall be displayed in a location conspicuous to clients entering the establishment. A therapist may cover his home address on the license however the name must be conspicuous.
- D. Establishment licenses may not be transferred to a different location. The Department must approve in writing any change of location, and a new license must be obtained from the Department.
- E. Hours of operation for any establishment shall be limited to 7:00 AM to 11:00 PM, inclusive.
- F. All licensees shall notify the Department of any criminal complaint brought against him within seven (7) days. Failure to do so may result in administrative revocation of licensure.
- G. Any false statements or information presented to the Department shall be grounds for revocation of license.
- H. No alcoholic beverage may be served in any establishment.
- I. Any establishment serving food shall obtain a food service establishment permit under the provisions of Chapter 10 of the Massachusetts Sanitary Code (105 CMR 59.000).
- J. No person shall treat or be treated while infected with a disease in a communicable form that can be transmitted from person-to-person.
- K. No room or section of an establishment shall be used as a bedroom or for sleeping or domicile

VIII. License Renewals

- A. Establishment licenses expire on the thirtieth (30th) day of September each year.
- B. The owner shall submit a renewal application provided by the Department along with a check or money order in the amount of one hundred dollars (\$100.00) on or before the thirtieth (30th) day of September.
- C. Any applications received after the renewal date shall be subject to a twenty-five dollar (\$25.00) late fee.
- D. An establishment's license shall be administratively revoked if the renewal application and fee are not received by September 30 each year. Once a license has been administratively revoked and then reinstated upon payment of the required fees, the establishment must meet all of the requirements of these rules and regulations, including those set forth in Sections V (A) (1) and V (A) (9).
- E. Administratively revoked licenses may be reinstated upon meeting all renewal requirements.
- F. Therapist licenses expire on the thirty-first day of July each year.
- G. The therapist shall submit a renewal application provided by the Department along with a check or money order in the amount of seventy-five dollars (\$75.00) on or before the thirty-first (31ST) day of July. The renewal requires that all therapists licensed after the effective date of these regulations shall maintain certification with the relevant national organization as outlined in section IH. .

- H. Any applications received after that date shall be subject to a twenty-five dollar (\$25.00) late fee.
- I. A therapist's license shall be administratively revoked if the renewal application and fee are not received by July 31 of each year.
- J. Administratively revoked licenses may be reinstated upon meeting all renewal requirements.
- K. A therapist license shall be considered retired if not renewed for one (1) year. A retired license may not be renewed; an initial license must be submitted to the Department.
- L. A license replacement fee for either an establishment of a therapist may be obtained for a fee of fifteen dollars (\$15.00).

IX. Advertising

- A. Establishment owners and therapists shall be mindful of professional ethics when placing advertisements. Advertising in periodicals and newspapers that appeal to prurient interests or advertising in a manner that uses sexual or provocative language and/or pictures to promote business may be construed as a breach of proper standards of bodywork.

X. Inspections

- A. Establishments and applicants are subject to periodic inspections by the Department or its authorized agent(s) during all business hours. Authorized agents shall include Department employees, Newton Police Officers, and others appointed, in writing, by the Commissioner.
- B. The purpose of inspections is to verify compliance with these regulations.
- C. Denial of access by an agent of the Department shall result in administrative revocation of license.
- D. The establishment licensee may be subject to disciplinary action, pursuant to Section XIII, below, when an inspection does not meet the standards and requirements set by these regulations or when the inspection reveals that the license of any employee has been suspended or revoked.
- E. Re-inspection shall take place when an establishment does not pass a regular inspection. The applicant shall submit an application for re-inspection, which shall include:
 - 1. A correction plan to be submitted to the Department within five (5) business days of the initial inspection.
 - 2. If more than one re-inspection is required, re-inspection fees of \$50 by check or money order made payable to the City of Newton.
 - 3. A re-inspection application must be submitted to the Department in writing.

XI. Disciplinary Orders, Actions, and Hearings

- A. Upon a finding by the Commissioner that a licensee has violated any provisions of these regulations, the Commissioner may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:

1. Suspension of a licensee's right to practice or maintain an establishment for a fixed period of time. It contemplates reentry into practice under the license previously issued.
2. Administrative revocation for failing to renew licensure in a timely manner. Licenses that have been administratively revoked may be reinstated upon meeting the renewal requirements of these regulations.
3. Revocation for cause which terminates the license. The Commissioner, in his discretion, may allow reinstatement of a revoked license upon conditions and after a period of time he deems appropriate. Any person whose license has been revoked may not apply for licensure for at least one (1) year unless otherwise stated in the Commissioner's revocation order.

B. Orders.

1. All orders shall be in writing.
2. Orders shall be served on the licensee or licensee's agent as follows:
 - (a) by sending a copy of the order by certified mail, return receipt requested, or
 - (b) personally, by any person authorized to serve civil process, or
 - (c) by posting a copy in a conspicuous place on or about the establishment.

C. Hearings

1. The person to whom any order or notice has been issued pursuant to violations of any provision of these regulations may request a hearing before the Commissioner. Such request shall be in writing and shall be filed with the Department within five (5) working days of receipt of the order or notice. Upon receipt of such request, the Commissioner or agent shall inform the petitioner thereof in writing of the time and place of said hearing, which shall be commenced within a reasonable time.
2. At the hearing, the petitioner shall be given an opportunity to be heard, to challenge the inspection findings, and/or to show why the order should be modified or rescinded, or why the license should not be suspended or revoked. Any oral testimony given at a hearing shall be recorded electronically and shall be part of the licensee's file.
3. After the hearing, the Commissioner shall make a final decision based upon the complete hearing record and shall inform the petitioner in writing of the decision. If the Commissioner sustains or modifies an order, it shall be carried out within the time period allotted in the original order or in the modification.
4. Every notice, order, decision or other record prepared by the Commissioner in connection with the hearing shall be entered as a matter of public record in the Department.
5. Any person aggrieved by the final decision of the Commissioner may seek relief in a court of competent jurisdiction.

XII. Penalties

- A. Criminal penalties, under Section 31 of Chapter 111, MGL, any person who violates any provision of these regulations shall, upon conviction, be fined not more than one thousand dollars (\$1,000.00) for violation of these regulations. Each day's failure to comply with an order of the Department shall constitute a separate offense.
- B. Non-criminal penalties, under the provisions of Section 40 of Chapter 21D, MGL, a civil penalty of fifty dollars (\$50.00) may be assessed at the discretion of the Department for violation(s) of these regulations.

XIII. Variance

- A. The Commissioner may vary the application of any provision of these regulations with respect to any particular case, when, in the Commissioner's opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Commissioner shall not conflict with the intent and spirit of these regulations.
- B. A request for a variance shall be submitted in writing. The Commissioner may ask for supporting evidence in order to consider the variance request. The request shall not be deemed complete until all such requested evidence has been received by the Commissioner.
- C. Any variance granted under this section may be subject to such qualification, revocation, suspension, or expiration the Commissioner expresses in the grant of the variance. A variance granted may be revoked, modified, or suspended in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with Section XII(C) of these regulations.
- D. Any variance granted by the Commissioner shall be in writing. A copy of any such variance, while it is in effect, shall be available to the public at all reasonable hours in the office of the Department. A copy of the variance shall also be on file in the usual place of practice of the therapist.

XIV. Severability

- A. If any section, subsection, sentence, clause, phrase, heading, or any portion of these regulations is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such provisions and such holding shall not affect the validity of the remaining portions thereof.